IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17371 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMATBHAI RATANSANG & 4 - Petitioner(s)
Versus
MAMLATDAR & ARICULTURE COMMISSION & 4 - Respondent(s)

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Appearance :
MR SANDEEP N BHATT for Petitioner(s) : 1 - 5.
NOTICE SERVED for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1, 5,
NOTICE UNSERVED for Respondent(s) : 2, 4,
MR DA SURANI for Respondent(s) : 2 - 4.
SERVED BY RPAD - (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 28/12/2006

ORAL JUDGMENT

1. In view of the order passed by this Court on 29.08.2006, the matter is finally heard.

2. Rule. Mr. Desai, learned AGP waives service of rule for respondent Nos.1 & 5 and Mr. Surani for respondent Nos.2 to 4.

3. The petitioners have preferred the petition for challenging the order dated 19.04.2006, passed by the State Government in appellate jurisdiction under Section 32P(9) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act').

4. Heard Mr. Bhatt, learned counsel for the petitioners, Mr. Surani for respondent Nos. 3 to 4, Mr.Desai, learned AGP for respondent Nos. 1 & 5.

5. Upon hearing the learned advocates appearing for both the sides, it appears that there is no dispute on the point that when the revision came to be heard by the State Government, the petitioners or the representatives of the petitioners were not heard. It is true that the petitioners had submitted the application and therefore, the petitioners can be said as having knowledge of the proceedings. As the petitioners were not heard, when the matter was considered for the first time, this Court had passed the

following order on 29.08.2006:

> "Mr. Bhatt, the learned counsel for the petitioners states that in view of the order dated 14.08.2006 passed by this Court, the petitioners are ready to deposit the amount of Rs. 10,000/- towards the probable cost for compensating the delay and the cost of the present litigation also, in case if this Hon'ble Court is inclined to consider the matter further.
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> In view of the above, **Notice** returnable on 8th September, 2006. The petitioners shall deposit the amount of Rs. 10,000/-as declared before this Court on or before 6th September, 2006 with this Court. Status quo as existing on today shall be maintained.

5. The petitioners thereafter, have deposited the said amount with this Court. Considering the facts and circumstances and in view of the consensus arrived at between the learned advocates appearing for the petitioners and the contesting respondents, if the matter is reheard by the State Government, I find that the same would meet with the ends of justice since the impugned order came to be passed without giving opportunity of hearing and the default on the part of the petitioners can be compensated by awarding suitable costs to the private respondents as well as to the State Government. No further reasons are required to be recorded since the learned advocates appearing for both the sides are agreeable for rehearing the

matter. Suffice it to state that as the petitioners were not heard and if the opportunity of hearing is given to the petitioners and the matter is decided afresh, no serious prejudice will be caused to the rights of the either parties and atleast, the complaint (for not hearing) shall not be available to the parties who may be facing the order of the State Government.

6. Under the above circumstances, the impugned order dated 19.04.2006 passed by the State Government is quashed and set aside on the ground that the hearing was not given to the petitioners on the condition that the petitioners pay the cost of Rs. 7,500/- to the respondent Nos. 2 to 4 in one set and cost of Rs.2,500/- to respondent Nos. 1 & 5 in one set, i.e. total Rs.10,000/- towards compensating the default in the proceedings before the State Government for not remaining present at the time when the hearing was fixed. As the cost of Rs.10,000/- is already deposited by the petitioners, the respective parties of their advocates on behalf of the parties concerned shall be at the liberty to withdraw the same. As the condition for deposit of the cost is already complied, consequently, the matter shall stand restored to the file of the State Government. The petitioners may move appropriate application for being impleaded as

party in the proceedings of the appeal before the State Government within a period of two weeks from today. Thereafter, the State Government shall give the opportunity of hearing to all concerned and shall pass afresh order in accordance with law as early as possible, preferably within a period of three months from the receipt of the order of this Court.

7. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. D.S. Permitted.

(JAYANT PATEL, J.)

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